

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* FRANCIS SHOWERING

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Appeal No. 2006-1683  
Application No. 10/009,306

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ON BRIEF

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MAILED

JAN 26 2007

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Before OWENS, CRAWFORD and FETTING, *Administrative Patent Judges.*

OWENS, *Administrative Patent Judge.*

*DECISION ON APPEAL*

This appeal is from a rejection of claims 58-75, which are all of the pending claims.

*THE INVENTION*

The appellant claims a container closure assembly. Claim 58 is illustrative:

58. A container closure assembly, comprising a container mouth and a closure therefor, the closure has a top portion with a plurality of segmented lugs depending therefrom, each of which has a plurality of vertical ridges, the closure comprising an engagement device configured for interlocking with a formation around the mouth to retain the closure on the mouth, and a band for bracing the engagement device to lock it in an engaged condition by resisting outward movement of the engagement device when the band is in a bracing position; characterized in that:

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the band is movable intact and relative to the engagement device out of the bracing position, and in that the mouth has a larger configuration than the engagement device of the closure in an unstressed condition of the engagement device, such that when the closure is in its operative position on the container mouth after fitting, the engagement device is stressed outwardly and the band is maintained in a state of static tension, said tension increasing the bracing effect of the band on the engagement device, and wherein the closure assembly physically interfaces only with a top surface and exterior surfaces of the container mouth.

#### *THE REFERENCES*

Towns et al. (Towns)	5,368,178	Nov. 29, 1994
Ohmi et al. (Ohmi)	5,762,217	Jun. 9, 1998
Bösl et al. (Bösl)	5,848,717	Dec. 15, 1998

#### *THE REJECTIONS*

Claims 58-75 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bösl in view of Ohmi, and over Townes in view of Ohmi.

#### *OPINION*

We affirm the aforementioned rejections.

Bösl discloses a snap-on cap having an elastically deformable retaining bead (3) with an engagement surface that slides over an external bead on a container mouth and then locks itself behind the external bead (col. 1, lines 30-40 and 58-65; col. 2, lines 22-25; figure 3).

Townes discloses a container (12) comprising a neck with an outer annular surface having a closure retaining groove (50) that engages a corresponding retaining bead (35) on an inner surface of the annular side wall of a closure (11) (col. 1, lines 31-35; figures 1 and 2). The portion of the neck above the closure retaining groove has a tapered frustoconical surface (32), and the inner surface of the side wall of the closure is correspondingly tapered but slightly undersized to form an interference fit and seal when the closure is pressed into position on the container neck (col. 1, lines 39-44).

Ohmi discloses a resin cap comprising a skirt (4) having a plurality of axially extending cuts (9) that enable the skirt to broaden diametrically outwardly to provide ease of removal of the cap (col. 6, lines 23-32). A removable, continuous ring (2) surrounds the skirt and prevents it from broadening outwardly, thereby providing accurate sealing of the skirt with the mouth of a container (col. 6, lines 1-3 and 41-53). The skirt's lower portion and the ring are connected by bridge portions (11) that provide tamper evidence by breaking if an instrument is inserted into the lower end of the skirt to remove the cap (col. 7, line 62 - col. 8, line 1).

The appellant argues that the interface between the closure and an interior surface of the container mouth disclosed by Ohmi at column 5, lines 62-67 is expressly excluded by the appellant's claims (brief, pages 6-9). That portion of Ohmi discloses a specific example wherein the top panel (3) of the cap has an inner ring (8) that engages the inner circumferential side of the mouth (5) of the container to provide sealing on that side and thereby make the sealing more accurate. Ohmi, however, does not indicate that the cap is limited to that specific example. Ohmi also discloses that firm, accurate sealing is obtained between the skirt and the ring (col. 6, lines 38-53), i.e., firm, accurate sealing is achieved without the inner ring. Hence, Ohmi would have fairly suggested, to one of ordinary skill in the art, use of the skirt and ring with the caps of Bösl and Townes that do not have an inner ring.

The appellant argues that the caps of Bösl and Townes appear to be axially longer than Ohmi's cap and that, therefore, Ohmi's ring would ride very low on the rims of the other caps such that there would not be adequate leverage for cap removal (reply brief, page 5). The appellant provides no evidence in support of the argument, and arguments of counsel cannot take the place of evidence. See *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984). Also, the argument assumes that even

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though the patent specifications are silent as to the proportions of the elements in the drawings, the drawings are to scale. That assumption is improper. See *Hockerson-Halberstadt v. Avia Group Intern.*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) ("it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue."). Moreover, the argument is based upon the references being bodily combined, and "[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference.... Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art." In *re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). See also *In re Sneed*, 710 F.2d 1544, 1550, 218 USPQ2d 385, 389 (Fed. Cir. 1983) ("[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review."). Ohmi would have fairly suggested, to one of ordinary skill in the art, the use of Ohmi's skirt and ring in the closures of Bösl and Townes to obtain the benefits of the skirt and ring disclosed by Ohmi, i.e., firm, accurate

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sealing, ease of removal of the cap, and tamper evident characteristics (col. 1, line 66 - col. 2, line 4; col. 6, lines 23-53; col. 7, line 62 - col. 8, line 2).

The appellant argues that if Ohmi were combined with Bösl and Townes, the combination would fail to show each claim limitation and would not lead to a reasonable expectation of success (reply brief, page 6). The appellant, however, provides no reasoning in support of that argument.

For the above reasons we are not convinced of reversible error in the examiner's rejections.

#### *DECISION*

The rejections of claims 58-75 under 35 U.S.C. § 103 over Bösl in view of Ohmi, and over Townes in view of Ohmi, are affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

*AFFIRMED*

*Terry J. Owens*  
TERRY J. OWENS  
Administrative Patent Judge

MURRIEL E. CRAWFORD  
Administrative Patent Judge

ANTON W. FETTING  
Administrative Patent Judge

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